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Author(s): Clayton R. Koppes

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Public Water, Private Land: Origins of the Acreage Limitation Controversy, 1933–1953

Clayton R. Koppes

The author is a member of the history department in Oberlin College.

IN 1976 THE Ninth Circuit Court of Appeals in San Francisco sent a series of shock waves along clearly defined fault lines of California agriculture. The court ruled that the federal reclamation laws dating to 1902 mean what they say: Heavily subsidized irrigation water can be distributed only to 160 acres per individual landowner, and anyone holding more than a quarter section must dispose of the excess land in order to receive reclamation water.¹ The ruling occasioned surprise and consternation in some quarters, for it seemed to presage major alterations in the land-tenure pattern of the Central Valley of California, and potentially on reclamation projects throughout the West. The only real occasion for surprise, however, was that the issue should have required recourse to the courts at all. The acreage limitation policy had been clearly established legally, had been praised by both political parties, and seemed to be an equitable principle for distributing the benefits of

¹*United States v. Tulare Lake Canal Co.*, 535 F.2d. 1093 (1976). The 3-to-0 opinion was written by the senior judge of the circuit, James R. Browning of Great Falls, Montana.

public spending. The Ninth Circuit's ruling raised three questions of historical significance. Why was the 160-acre law only erratically enforced for three quarters of a century? Why did the issue arise in particular in the Central Valley, where the land-tenure pyramid presented the very problem the reclamation laws were designed to avoid? Why did a liberal administration in power when the Central Valley Project began operation not only fail to enforce the excess land law but also raise the most serious threat to the redistributive principle of reclamation?

This article attempts to answer these questions, which lie at the root of the modern controversy over the 160-acre law. While considering reclamation policy as a whole, the study focuses on the Central Valley, which has been the fulcrum of the dispute for the past four decades. Interpretations of the key role of the Bureau of Reclamation after World War II have varied. Some persons contend the bureau upheld the 160-acre law. Others, notably Paul S. Taylor and the Ninth Circuit, pinpoint the bureau's failure to uphold the acreage limitation, but they are concerned mainly with legal analysis.² This paper, drawing on previously unused archival sources, analyzes legislation, and particularly administrative practices, in the chang-

²The fullest treatment of the excess land law during the period 1933–1953 is David A. Kathka, "The Bureau of Reclamation in the Truman Administration: Personnel, Politics, and Policy" (Ph.D. dissertation, University of Missouri, 1976), chaps. 1–5 (hereafter cited as "Bureau of Reclamation"). Kathka argues that "Truman prevented any erosion in the existing policy, but did nothing to strengthen it for the future . . ." (p. 108). Perhaps beguiled by Commissioner of Reclamation Michael Straus's rhetoric, Kathka emphasizes what the Bureau of Reclamation said rather than what it did. William E. Warne, assistant commissioner of reclamation and assistant secretary of the Interior from 1947 to 1951, contends that Straus "read the law and tightened up the program" (Warne, *The Bureau of Reclamation* [New York, 1973], 18). Paul Wallace Gates devotes much attention to the early years of the excess land law, but deals only briefly with the controversy from the 1930s to the present (*History of Public Land Law Development* [Washington, D.C., 1968], chap. 22). The leading authority on the 160-acre law, economist Paul S. Taylor, is highly critical of the bureau. Of his many writings, "The Excess Land Law: Execution of a Public Policy," *Yale Law Journal*, LXIV (1955), 477–514, is most relevant to the period 1933–1953. Two key legal opinions—the Ninth Circuit Court decision and an opinion by Solicitor of the Interior Department Frank J. Barry in December 1961 (68 I.D. 370)—are highly critical of the Bureau of Reclamation's legal maneuvers. The most unusual perspective is found in Harry J. Hogan, *Acreage Limitation in the Federal Reclamation Program* (Arlington, Va.: National Water Commission, 1972, distributed by National Technical Information Service, U.S. Department of Commerce). Hogan, a devotee of large-scale farming and the mythical free market, provides abundant evidence of the means used to evade compliance with

ing political environment from 1933 through 1953. It argues that the decisive reason for the demise of the excess land law is traceable not merely to the conservative attack but to changes in liberal ideology and politics after World War II. The Franklin D. Roosevelt administration endorsed the family farm and the redistributive purpose of reclamation; the Harry S. Truman administration subordinated both ideals in favor of commercial agriculture and economic growth.

Federal reclamation policy since its inception in the Newlands Reclamation Act of 1902 has espoused twin objectives: to make barren land productive and to distribute the benefits of public spending widely. The Reclamation Bureau has achieved the first goal superbly. Federal spending for reclamation averaged \$8.85 million annually before 1928. With the authorization of the Boulder Canyon Project in 1928, the nation's first true multipurpose project, the bureau assumed its modern character as an agency known for massive construction ventures which provided a prominent role for hydroelectricity as well as irrigation. The New Deal's emphasis on public works and on public over private electrical power caused the bureau's appropriations to spurt to an annual average of \$52 million by 1940; funding reached a one-year record of \$359 million in 1950. The number of acres irrigated under reclamation projects reached 4,460,979 in 1946 and 10,929,824 in 1975. At first the bureau mainly watered lands that had been taken from the public domain. By the 1920s, however, two-thirds of the acreage that received project water had been privately held

the 160-acre law, and he applauds the loopholes: "The flexibility and comprehensiveness of the evasive and meliorative techniques excite admiration. In difficult circumstances over six decades the Bureau of Reclamation and the irrigation farmer, with the tacit, and sometimes express, approval of Congress, have brought off what must be regarded as a remarkable triumph in public administration" (p. 97).

Limited to the 160-acre law, this article does not deal with two other controversial areas of reclamation policy. One is the widely ignored requirement that water users be bona fide residents. The residency requirement was upheld in 1972 by Senior District Judge William Murray of Montana visiting in the Southern District of California (*Yellen v. Hickel*, 352 F. Supp. 1300). The Ninth Circuit in 1977 vacated Murray's judgment for technical reasons having to do with who has standing to sue, but the court did not rule on the merits of the residency question. (*U.S. v. Imperial Irrigation District*, 559 F.2d. 509). Some persons believe that enforcement of the residency requirement would entail more far-reaching consequences than the acreage limitation. Another issue is the sale of water rights. See Joseph L. Sax, "Selling Reclamation Water Rights: A Case Study in Federal Subsidy Policy," *Michigan Law Review*, LXIV (1965), 13-46.

when construction began. In the 1930s the agency began to provide “supplemental water” to farms that were already irrigated but needed more water. In the Central Valley all the farms that were to receive bureau water were privately owned and in the majority of cases would get supplemental water. The application of the acreage limitation was especially sensitive and important in the Central Valley, where the bureau was putting public water on private land.³

The second goal—the redistributive principle—was achieved at best imperfectly, but it was of crucial importance because of the heavy subsidies that water users received. Wide distribution of benefits had inhered in reclamation law since the 1902 act. The father of the principle, Representative Francis G. Newlands of Nevada, explained in 1901 that the purpose of acreage limitation was “not only to prevent the creation of monopoly in the lands now belonging to the Government, but to break up existing land monopoly in the West. . . .” Water users at first had to repay construction charges within ten years. When farmers on many early projects had trouble meeting their payments, however, the repayment period was gradually extended to forty years—and with the added bonus that repayment would not begin until after a ten-year “development period” had elapsed. Generous though the repayment period was, water users’ greatest benefit was that they were not charged interest. At an interest rate of 3 percent, the subsidy would amount to 57 percent of the cost over forty years; at 5 percent it would equal 74 percent. The Comptroller General of the United States estimated that the interest-free financing alone gave water users on the Central Valley Project a total subsidy of \$1.2 billion. Water users received a further subsidy on annual operating costs because an average of about sixty-five percent of the irrigation expenses were paid by users of reclamation-generated electricity. When the Central Valley Project began operation in 1947 water users were charged

³Donald C. Swain, “The Bureau of Reclamation and the New Deal, 1933–1940,” *Pacific Northwest Quarterly*, LXI (1970), 142; Gates, *History of Public Land Law Development*, 691, 698; House Committee on Interior and Insular Affairs, Subcommittee on Water and Power Resources, *Hearings on Acreage Limitation Provisions of Reclamation Law*, 94 Cong., 2 sess. (1976), 13.

\$2.70 per acre-foot. If all the subsidies were eliminated and an interest rate of 3 percent were assumed, the charge would have been \$8.36 per acre-foot; at 5 percent interest, the toll would have mounted to \$10.80 per acre-foot.⁴

The device chosen to insure wide distribution of benefits was to restrict an individual landowner to enough water to irrigate 160 acres. The limit applied to water, not land. The distinction was crucial, for water rights were usufructuary rights upon which conditions for beneficial use could more easily be imposed than on fee simple titles in land. The 160-acre limit first found expression in the Reclamation Acts of 1902 and 1912, but these laws lacked enforcement provisions and land speculators often vitiated the social intent. The Reclamation Act of 1914 required landowners to dispose of their excess lands on terms designated by the Secretary of the Interior if they wished to receive project water. Difficulty in enforcing the provisions of the 1914 act after a project had been initiated left it nearly as fruitless as its predecessors. Accordingly the Omnibus Adjustment Act of 1926 required holders of excess lands to sign "recordable contracts" before receiving project water. Under these contracts the landholders agreed to sell their excess lands within ten years at an appraised price that excluded any increased value from irrigation. Recordable contracts proved effective on the Vale, Owyhee, and Deschutes projects, and suggested that the Omnibus Adjustment Act, if it were implemented, could control speculation and realize the distributive intent.⁵

In an arbitrary mathematical symbol, lawmakers tried to express a bundle of economic and social objectives. The ideal

⁴Arthur B. Darling, ed., *The Public Papers of Francis G. Newlands* (2 vols., Boston, 1932), I, 62; "Acreage Limitation in the Central Valley—A Report on Problem 19, Central Valley Project Studies," Sept. 25, 1944, Paul S. Taylor Papers, Bancroft Library, University of California, Berkeley; Richard Boke to Edson Abel, Jan. 31, 1947, file 742, Records of the Bureau of Reclamation, Record Group 115, National Archives (hereafter cited as RG 115); Sax, "Selling Reclamation Water Rights," 13n; Comptroller General of the United States, *Congress Should Reevaluate the 160-Acre Limitation on Land Eligible to Receive Water from Federal Water Resources Projects* (Washington, D.C., 1972), 10 (hereafter cited as Comptroller General report).

⁵*Yellen v. Hickel*, 352 F. Supp. 1300, 1306–1307; Richard K. Pelz, ed., *Federal Reclamation and Related Laws Annotated* (3 vols., Washington, D.C., 1972), I, 31–89, 177–183, 197–198, 376–387; William E. Warne, "Land Speculation," *Reclamation Era*, XXXIII (Aug. 1947), 176–180.

of the family farm reflected the agrarian myth; the 160-acre threshold was derived from the Homestead Act. On early projects a quarter section frequently exceeded the amount a family could fully utilize. As farm sizes grew, 160 acres proved too small for some soil and climatic conditions. But the disputes over 160 acres as a figure too often obscured its importance as a symbol. The debate over what size of farm was economically sound tended to obscure the point that, from a strict market analysis, federal reclamation projects are not economically viable to start with. Farms receiving project water are profitable in large part only because of the heavy federal subsidy. The family farm and a quarter section were vehicles for broader purposes: distributing the benefits of public subsidy widely during the Progressive era, redistributing wealth during the New Deal, and fostering democratic communities.⁶

After 1926 Congress dealt with the excess land issue on an ad hoc basis. The redistributive principle was extended in two instances. The Columbia Basin Project Act of 1937 gave the Secretary of the Interior authority to reduce the maximum to as little as 40 acres; revision of the act in 1943 permitted him to vary the size from 40 to 160 acres depending on the acreage needed to establish a viable farm unit. The Secretary also received authority to purchase excess lands in order to facilitate their redistribution. Congress applied the 160-acre standard to the Arch Hurley (Tucumcari) Project in New Mexico in 1937, even though the project provided only supplemental water. The Department of the Interior firmly supported both enactments.⁷

Congress also specifically exempted two projects from the 160-acre restriction: the Colorado-Big Thompson Project in

⁶For data on desirable farm sizes on early projects see the report by F. H. Newell, Jan. 27, 1913, and the responses from the field on which it was based, File 262-B3, General File, 1902–1919, RG 115. Some recent studies suggest that farms of 160 acres, or 320 acres for husband and wife, are still economically viable in the Central Valley. See George Goldman *et al.*, *Economic Effect of Excess Land Sales in the Westlands Water District* (Berkeley: University of California Division of Agricultural Sciences, Special Pub. 3214, June 1977). E. Phillip Leveen argues that large farms are not inherently more efficient but reflect in part applications of technology and other matters of social choice. See his statement in Senate Select Committee on Small Business and the Committee on Interior and Insular Affairs, *Hearings on Will the Family Farm Survive in America?* 94 Cong., 1 and 2 sess. (1975–1976), 189–202.

⁷Pelz, *Federal Reclamation Laws*, I, 596, II, 728–735.

Colorado in 1939 and the Truckee Project in Nevada in 1940. Both ventures irrigated land at high altitudes and with short growing seasons, which supposedly necessitated larger acreages. The product of congressional pork-barrel politics, the exemptions were of dubious economic merit. Perhaps this is why Congress stipulated that the two measures established no precedents for further exemptions. Endorsements for both laws slipped through the Department of the Interior without the approval of Secretary Harold L. Ickes, who was livid when he learned belatedly of the loopholes.⁸

The most serious drawback to realization of the redistributive intent had been lax administration. When Ickes inquired about the acreage limitation in 1934, the bureau told him it had been "a dead letter for years" and that it was better to "let sleeping dogs lie."⁹ Little enforcement was attempted until the late 1930s for three major reasons. First, legal interpretations were clouded. Regulations in force in the 1930s were derived in part from a 1914 ruling by Bureau Chief Counsel Will R. King which allowed landowners to receive water for more than 160 acres if construction charges were paid in full on the excess lands. King's opinion was based on a dubious reading of the 1912 act, as would become clear when family-farm adherents examined it closely; meanwhile, however, his opinion opened an important escape hatch for larger landholders. Another legal diversion arose when early in its history the bureau allowed a husband and wife to receive water on 160 acres each. This informal practice received recognition as a *fait accompli* in a solicitor's decision in 1945. Second, it was often difficult to find buyers for excess lands, especially in the 1930s, when

⁸Seriously embarrassed by his subordinates' actions, Ickes had little choice but to recommend that the President sign the bill; the Secretary phrased the recommendation as weakly as possible, however. He passed off the department's position as being "neither favorable nor unfavorable," but simply a lack of objection because the Nevada conditions were similar to those on Colorado-Big Thompson. Ickes to Harold D. Smith, Nov. 25, 1940, file 400.08, RG 115; Pelz, *Federal Reclamation Laws*, I, 612–613, 712; "Providing that Excess-Land Provisions of Federal Reclamation Laws Shall Not Apply to Certain Lands," *Sen. Rep. 1921*, 75 Cong., 3 sess. (1938); "Amending the Federal Reclamation Laws," *H. Rep. 3036*, 76 Cong., 3 sess. (1940); interview with Arthur Goldschmidt, head of the Division of Water and Power from 1943 to 1946, New York City, April 14, 1978.

⁹F. C. Youngblutt, "Suggestions for Legislation," Aug. 12, 1938; R.M.P. to Elwood Mead, n.d., ca. Jan. 1934.

many farms had been foreclosed. A program of federal purchase or government credit for purchasers would have promoted the breakup of excess holdings. Third, the bureau gave priority to “practical engineering”—the construction and operation of the physical works—over reclamation’s social objectives.¹⁰

As a result of this weak enforcement, the bureau had at best a mixed record in redistribution. A survey of land ownership on bureau projects in 1946 revealed that small and medium-sized ownerships predominated but on some projects there were serious violations of the excess land law. The agency provided water to 4,030,167 acres divided among 106,338 ownerships. The holders of 160 acres or less numbered 102,853 or 96.6 percent of the total; their farms embraced 2,802,245 acres or 69.5 percent of the total. In the medium-sized category (161 to 640 acres) 3,255 owners held 21.2 percent of the total. The .3 percent who enjoyed a square mile or more held 9.3 percent of the total; these barons owned 50.3 percent of the excess lands. Overall, 30.5 percent of the acres were in holdings which exceeded the limit. In many cases the landholding pattern probably reflected the conditions that existed before reclamation projects were initiated rather than the effects of enforcement. Nevertheless, the bureau, in part fortuitously, had avoided large-scale subsidies to large farms and agribusiness corporations which would have solidified a skewed landholding pattern.¹¹

The Central Valley Project (CVP) encountered, however, the very land tenure problem Representative Newlands had

¹⁰John C. Page to Leo L. Heisel, Jan. 4, 1939; Page to Under Secretary of the Interior, Jan. 21, 1939; see also replies of field officers to Page, Dec. 1940–Feb. 1941, file 400.08, RG 115; 43 L.D. 339 (1914); Opinion M-34172, “Application of the Excess Land Provisions of the Federal Reclamation Laws to Community Property States,” Aug. 21, 1945, reprinted in House Committee on Interior and Insular Affairs, “Central Valley Project Documents,” *H.Doc. 85–246*, 85 Cong., 1 sess. (1957), II, 692–698. The phrase “practical engineering” was used by S. T. Harding, a prominent California water engineer, who lamented the department’s awakening to the social implications of reclamation in contrast to its earlier attitude. Senate Committee on Public Lands, *Hearings on Exemption of Certain Projects from Land-Limitation Provisions of Federal Reclamation Laws*, 80 Cong., 1 sess. (1947), 120.

¹¹U.S. Bureau of Reclamation, *Land Ownership Survey on Federal Reclamation Projects* (Washington, D.C., 1946), 29–53. The total number of acres on reclamation projects in 1946 reached 4,460,767. The bureau study excluded 430,600 acres for which a

feared. The bureau's greatest venture, CVP by the 1970s carried a total price tag of \$2.3 billion, of which \$1.1 billion had been allocated to irrigation and had to be repaid to the government; CVP irrigated 2.3 million acres. The pyramidal land structure of the Central Valley was probably more severe than in any other state. In 1945 the Bureau of Agricultural Economics studied irrigable landholdings in three counties—Madera, Tulare, and Kern—which appeared to be representative of the CVP service area. It found that 955,700 irrigable acres were divided among 9,551 owners. Some 8,417 owners, who enjoyed 160 acres or less apiece, held 377,900 acres or 40 percent of the total, compared to nearly 70 percent on other bureau projects; in other words, 60 percent of the land holdings exceeded the acreage limit. Medium-sized farms of 161 to 640 acres totaled 272,000 acres or 28 percent of the whole; they were held by 952 owners or 10 percent of the total. Large farms (641 acres or more)—owned by 182 owners or 2 percent of the total—embraced 305,800 acres, or 70 percent of all excess lands, compared to 50 percent on other bureau projects. The farms larger than a square mile comprised 32 percent of the total acreage, more than triple the 9.3 percent on bureau projects elsewhere. If the agency's minimal enforcement practice carried over to CVP, the bureau would find itself subsidizing massively the largest economic interests.¹²

CVP, said Arthur Goldschmidt, one of Icke's advisers, offered "the best opportunity now available for correcting the land pattern of California." The Secretary agreed. "I am decidedly of the opinion that we ought to do everything in our power to enforce the 160-acre limitation . . .," Ickes said in 1940. The department readied an enforcement campaign in

breakdown by size was unavailable. For further analysis of landholding patterns on Bureau of Reclamation projects and in the Central Valley, see Clayton R. Koppes, "The Bureau of Reclamation's Excess Land Law: Origins of the Modern Controversy, 1933–1961," California Institute of Technology Social Science Working Paper No. 200 (March 1978), 11–23.

¹²Comptroller General report, 6, 10–11; Charles E. Coate, "Water, Power, and Politics in the Central Valley Project, 1933–1967" (Ph.D. dissertation, University of California, Berkeley, 1969), chap. 2; Edwin E. Wilson and Marion Clawson, *Agricultural Land Ownership and Operation in the Southern San Joaquin Valley* (Berkeley, 1945); Carey McWilliams, *Factories in the Field: The Story of Migratory Farm Labor in California* (Boston, 1939), chap. 1.

preparation for the beginning of CVP operations after the war's end. Harry W. Bashore, a veteran agency engineer who seemed more attuned to Ickes's social goals, became commissioner of reclamation in 1943. The department launched two dozen major studies of the potential social effects of the project. In November 1943 Ickes, Bashore, and President Franklin D. Roosevelt told the National Reclamation Association—an opponent of the excess land law—that they intended to apply the statute to all CVP lands.¹³

The enforcement campaign reflected a maturation of Ickes's and his advisers' commitment to the redistributive purposes possible because of the growth of the reclamation program. One goal was public power. As huge dams such as Bonneville on the Columbia neared completion, the crucial question became how the electricity at the dams would be distributed. Moderate and conservative interests wanted the government to sell power to private utilities and to consider power a "cash crop" for which the government got top dollar. But Ickes and his liberal coterie insisted that the government string its own transmission lines, give priority to municipal and cooperative distribution facilities, and levy low rates. Since he found the Bureau of Reclamation too conservative, Ickes formed a Division of Water and Power in his office in 1941 to supervise power distribution and related issues. The division's first head, lawyer Abe Fortas, promptly announced: "Water and power must be distributed to the people without private profit."¹⁴

The second goal was what can be called the "community New Deal." Beyond the ideal of the family farm, New Deal community programs embraced diffused property ownership as the first step toward a planned, ideal cooperative commonwealth. Community New Dealers had an organic view of

¹³ Arthur Goldschmidt to Ickes, April 10, 1944, file 8-3, part 4, Records of the Office of the Secretary of the Interior, Record Group 48, National Archives; Ickes to Page, March 30, 1940, file 400.08, RG 115; see the messages of Ickes and Roosevelt in *Proceedings: Irrigation War Food Conference and 12th Annual Meeting, National Reclamation Association, Denver, Colorado, October 27-28-29, 1943* (Washington, D.C., 1944), 201-203; Kathka, "Bureau of Reclamation," 55.

¹⁴ Abe Fortas, "Relationship of Power to Reclamation," *Reclamation Era*, XXXI (Dec. 1941), 312; Koppes, "Conservation and the Continuity of American Liberalism, 1933-1953," California Institute of Technology Social Science Working Paper No. 174 (June 1978).

society; it should be roughly egalitarian, and cooperation and group life should assume more importance than traditional individualism. Franklin Roosevelt believed that reclamation projects should not benefit "the man who happens to own the land at the time" but should provide small tracts that would "give first chance to the 'Grapes of Wrath' families of the nation." He envisioned a comprehensively planned Columbia Valley Project that could support 80,000 new families in agriculture and 20,000 others in small agriculture-related businesses.¹⁵

Before the enforcement campaign could bear fruit, the department had to fight off a conservative challenge that threatened the very existence of the 160-acre law. In March 1944 Representative Alfred J. Elliott of California attached a rider to the rivers and harbors appropriation bill that would have exempted CVP from the acreage limitation. Elliott, a farmer from the Central Valley town of Tulare where some of the largest landholdings were located, accused the department of "trying to socialize agriculture and force Communism upon the people of the San Joaquin Valley." Land might be sold to undesirable people, he warned; "remember the Japanese and the trouble we had with them." Caught by surprise, the department could not keep the House from adopting the Elliott rider.¹⁶

As the battle shifted to the Senate, the bureau tried to devise a compromise. The Elliott amendment had crystallized understanding of the home-building and antimonopoly components of reclamation policy among bureau personnel, Commissioner Bashore noted. But many bureau officials felt the 160-acre law was too strict and difficult to administer in an area of established agriculture, such as the Central Valley. Moreover, they doubted they could win a straight-out fight to preserve the law. Some went so far as to suggest that the acreage limitation should not apply to anyone holding land before CVP was

¹⁵Clayton R. Koppes, "From New Deal to Termination: Liberalism and Indian Policy, 1933–1953," *Pacific Historical Review*, XLVI (1977), 547–550; Roosevelt to Ickes, Dec. 21, 1939, box 75, President's Secretary's File, Roosevelt Papers, Franklin D. Roosevelt Library, Hyde Park, N.Y.

¹⁶Elliott quoted in *Dinuba Sentinel*, April 10, 1947, in file 742—Central Valley, RG 115; Warne to Bashore, March 20, 1944, file 400.08, *ibid*.

authorized. A more moderate proposal would have given water to all landowners but levied a surcharge on water delivered to excess lands.¹⁷

Secretarial officials dismissed the proposals out of hand. The bureau's attitude was "not even that of an enlightened banker," said Fortas, now Under Secretary. The secretariat refused to compromise an ideological issue—the type of society to be encouraged by federal subsidy. Assistant Secretary Oscar L. Chapman considered the rider part of a larger attack on the community New Deal that pitted "the organized big men against the unorganized little men; the kulaks against the peasants; the haves against the have-nots." Department spokesmen emphasized the importance of distributing the benefits of the subsidy widely and of developing farm communities. They relied on a study by a young University of California-trained anthropologist, Walter Goldschmidt, which contrasted social patterns in two Central Valley towns. Arvin, characterized by large farms, had a more unequal distribution of income, more farm laborers, and fewer retail businesses and social amenities. Dinuba, characterized by small to moderate-sized farms, showed higher and more evenly distributed income, more farm owners and retail businesses, and greater social cohesion. Arvin represented impermanence and alienation; Dinuba, stability and community. Goldschmidt attributed the differences "confidently and overwhelmingly to the scale-of-farming factor."¹⁸

Committed to the redistributive principle, members of the department secretariat knew political backing could be mobi-

¹⁷Commissioner of Reclamation, Administrative Letter No. 50, Oct. 23, 1944; Charles E. Carey to Bashore, May 16, 1944; Warne to Carey, Oct. 5, 1944, file 400.08, RG 115; R. B. Williams to S. O. Harper, July 5, 1944; Harper to Williams, July 18, 1944, box 6, Sinclair Harper Papers, Western History Research Center, Coe Library, University of Wyoming, Laramie; Kathka, "Bureau of Reclamation," 59.

¹⁸Fortas to Ickes, Nov. 10, 1944, box 258, Harold L. Ickes Papers, Manuscript Division, Library of Congress; Chapman to Ickes, Oct. 13, 1943, box 67, Oscar L. Chapman Papers, Harry S. Truman Library, Independence, Mo.; Walter Goldschmidt's study was published by the Senate Special Committee to Study Problems of American Small Business under the title, "Small Business and the Community: A Study in Central Valley of California on Effects of Scale of Farm Operations," *Committee Print 13*, 79 Cong., 2 sess. (1946), see esp. 29, 45–50; see also Walter Goldschmidt, *As You Sow* (New York, 1947); and Richard S. Kirkendall, "Social Science in the Central Valley of California: An Episode," *California Historical Society Quarterly*, LXIII (1964),

lized. Support came from some farm organizations, church groups, labor unions, and veterans groups. Liberal to moderate senators praised the family farm. The most devoted ally was Robert M. La Follette, Jr., of Wisconsin, who had become aware of the social problems created by the Central Valley's land tenure pyramid during his investigation of migratory labor. La Follette and his allies threatened to filibuster if the Elliott amendment were included in the bill, and the Senate conferees insisted it be deleted. Since House conferees remained adamant on keeping it, the rivers and harbors bill was lost until the next session of Congress, when the measure passed without the amendment. The deadlock on the bill—an extraordinary fate for pork-barrel legislation—helped solidify eastern and southern senators behind the 160-acre law. The Interior Department scored another victory in 1944 when it got the Senate to insert the acreage limitation principle into the bill authorizing the Pine Flat Dam on the Kings River in California. Although Roosevelt and Ickes wanted the bureau—the logical agency—to build the dam, the Army Corps of Engineers used its congressional support to win the assignment. The Corps promised large landowners exemption from the acreage limitation; while the department might have offered the same lure in order to get the dam, it stuck to the 160-acre principle.¹⁹

After the Interior Department's successful defense in 1944, however, disquieting signs began to multiply. The years 1945–1946 marked a transition in both personnel and policy. Fortas resigned at the end of 1945. In February 1946 Ickes resigned from the Cabinet following a celebrated dispute with the new President, Harry S. Truman, over the nomination of oil millionaire Edwin Pauley as Under Secretary of the Navy. "Honest Harold's" successor was Julius A. Krug, an electrical power engineer who had served as chairman of the War Production Board, which had epitomized cooperation between

195–218. A recent study tends to confirm Goldschmidt. It finds two distinct rural political economies in California—one characterized by farm communities, family-sized farms, and small business; the other by large-scale, corporate, nonresident farms. See Merrill D. Goodall, John D. Sullivan, and Timothy de Young, *California Water: A New Political Economy* (Montclair, N.J., 1978), esp. p. 100.

¹⁹*Cong. Rec.*, 78 Cong., 2 sess. (1944), 9494.

big industry and government. Krug, a protege of Bernard Baruch and David Lilienthal, had mildly liberal leanings; the new Secretary's main interest appeared to lie with expansion of federal power facilities, but shorn of their redistributive potential. A "much more passive" influence on the department than Ickes, Krug tended to wait until a "crisis built up so that he was forced into a corner and it had to be solved," noted one of his assistant secretaries, Warner W. Gardner. Krug elevated Oscar Chapman to Under Secretary, a position he held until December 1949, when he assumed the secretaryship upon Krug's resignation. Chapman, though among the more liberal members of Truman's Cabinet, changed his ideas and tacked to the right in an act of political survival. Amiable and conciliatory by nature, he hated to make tough decisions even when forced into a corner.²⁰

Krug and Chapman allowed the new commissioner of reclamation, Michael Straus, much freedom of action. A former Chicago newspaperman, Straus had been an effective publicist for Ickes in the 1930s. Assistant Secretary from 1943–1945, Straus took an ostensible demotion to serve as commissioner of reclamation from 1946–1953. The new commissioner's attitude was "largely political and bureaucratic in the best sense," observed Fortas. "He is principally interested in obtaining work and jurisdiction and is not greatly interested in the social and economic problems." Straus presided over the bureau's greatest expansion. Bureau funding reached a one-year record of \$359 million in 1950, and its annual appropriations during the Truman administration were higher than for any other period. Under Straus the bureau's ambitions knew few bounds. The agency attempted—unsuccessfully—to gain congressional authorization to build dams in Hells Canyon, the deepest gorge on the continent, and at Echo Park in Dinosaur National Monument, which touched off the bitterest fight between developers and preservationists over the inviolability of the national park system.²¹

The bureau's expansion reflected a more general shift in liberal thought. The redistributive concepts important to one

²⁰Warner W. Gardner oral history interview (Truman Library), p. 30; Koppes, "Conservation and the Continuity of American Liberalism," 15.

²¹Fortas to Ickes, Nov. 10, 1944, box 258, Ickes Papers.

wing of New Deal thought were submerged by the new emphasis on economic growth. Truman administration economists, notably Leon Keyserling, argued that the wartime partnership between government and business had proved capitalism capable of an almost unlimited expansion that would obviate the need for redistributive policies. Economic growth constituted "the very essence of our development as a nation," said Chapman. The growth emphasis meant that the Bureau of Reclamation placed more importance on increasing the capacity of dam and irrigation works; how the products were distributed became secondary. Valley authorities, for whom Ickes and Fortas held high hopes, gradually lost favor in the department until by 1950 Chapman had abandoned them entirely. He also shifted from priority for low-rate federally controlled distribution of power in CVP to distribution through Pacific Gas and Electric Company at higher costs and with substantial profits for the private utility. The partnership between government and industry for maximum production provided the economic capacity to finance the Cold War, and economic growth seemed to represent a capitalist alternative to redistributive policies with their tinge of radicalism. As returning veterans were absorbed into industry and urban areas, and when the feared postwar depression did not materialize, some of the incentive for an agricultural resettlement program dissipated. A department-wide seminar in late 1945 on postwar policy revealed that the ideal of the family farm as a way of life was giving way to a primary concern with the "development of successful farms operated as business enterprises." The department should not abandon the family farm outright, its land planners said, but it "should recognize that this is a period of cultural transition." Indeed, the year 1945 marked the beginning of what historian John Shover has termed the "great disjuncture" in American agriculture, when technology, large-scale farming, and government policy worked a fundamental alteration in the structure of agriculture and rural life.²²

The acreage limitation restriction came under attack again when the Republican-controlled Eightieth Congress convened

²²Evelyn Cooper to C. Girard Davidson, April 30, 1946, box 95, Joel D. Wolfsohn Files, Records of the General Land Office, Record Group 49, National Archives; John Shover, *First Majority—Last Minority: The Transforming of Rural Life in America* (DeKalb,

in 1947. California Senator Sheridan Downey, a Sacramento lawyer who specialized in irrigation cases and had "substantial" landholdings in the Central Valley, introduced a bill to exempt CVP, the San Luis Valley Project in Colorado, and the Valley Gravity Project in Texas from the 160-acre law. Though he had been a Bull Moose Progressive in Wyoming, and Upton Sinclair's candidate for lieutenant governor of California in 1934, Downey turned out to be increasingly conservative after reaching the Senate in 1938. He and his supporters stressed the difficulties of applying the limit in an area of established agriculture. The bureau was "planning and plotting the destruction of a free economy to institute totalitarian rule over the Central Valley," he charged. The opponents of redistribution held a strongly individualistic view that subordinated community values to economic goals achieved through private enterprise. Central Valley agriculture and its accompanying social patterns resulted from the inexorable working of natural geographic and economic forces, they argued; the market rewarded those who demonstrated the most skill. They called on the department to "just put water on all of the land and treat all of our citizens without discrimination." Government policy should assist in the release of individual energies, as James Willard Hurst observed in discussing nineteenth-century legal theories; government efforts to achieve greater equality of result were anathema.²³

Ill., 1976), 141; Willard W. Cochrane and Mary E. Ryan, *American Farm Policy, 1948–1973* (Minneapolis, 1976), 26; Alonzo L. Hamby, *Beyond the New Deal: Harry S. Truman and American Liberalism* (New York, 1973), 297–303; Koppes, "Conservation and the Continuity of American Liberalism," 19–24. Reflecting on his experience in the solicitor's office from 1944 to 1969, former Solicitor Edward Weinberg acknowledged that "both within the executive branch and in the Congress there has been less than a burning desire to provide the staffing and funds necessary to do an effective job." The department, the bureau, and Congress interpreted the bureau's role "as the construction and operation of water supply facilities for the purpose of improving the general economy of the areas affected, and of providing the national economy with increased supplies of food and fiber. Administration of the excess land laws, which consists basically of telling people that they must change their ways and which necessarily involves time consuming and often burdensome procedures, has been relegated to a secondary role. I think this regrettable [sic], but nevertheless it is a fact." *Will the Family Farm Survive in America?*, 154.

²³Senate Committee on Commerce, *Hearings on Rivers and Harbors Omnibus Bill: California Central Valley Project*, 78 Cong., 2 sess. (1944), 623–633, 676, 702; see also Senate Committee on Public Lands, *Hearings on Exemption of Certain Projects, passim*;

The Downey bill caught the Interior Department searching for an acreage limitation policy. The bureau had begun to slide back toward the position it had assumed before the Ickes secretariat championed the acreage limitation. The bureau continued to argue that some policy changes were desirable and, in any case, politically necessary. Its committee on compromise legislation professed adherence to the family farm ideal but proposed various adjustments upward. The most significant allowed holders of any amount of excess land to pay a surcharge and continue receiving supplemental water if the Secretary determined it was necessary "to prevent the deterioration of established communities." Krug, however, disliked the proposals because they were too vague and did not eliminate all subsidies to large landowners. He doubted the 160-acre limit would harm established communities. Rather, "a breakup of the large holdings might in time improve rather than deteriorate the community," he said. He seemed particularly impressed by the arguments made for a firm stand by Richard Boke, a veteran New Deal publicist and bureaucrat whom Ickes had appointed in 1945 to head reclamation Region II, which supervised the CVP. "Frankly, no suggestion has yet been made that is more in keeping with the principles of Reclamation than the acreage limitation in the present law," the Secretary pointed out in January 1947. He told the bureau to hold the line at 160 acres.²⁴

Straus and the bureau found themselves in a dilemma. They did not want to fight for the 160-acre law, but they dared not abandon it outright. Several political inducements encouraged the bureau to weaken the 160-acre law. Some of the projects the agency wanted to undertake were not feasible if ownership were limited to 160 acres. Public power generation, which was controversial in itself, might be retarded if controversy swirled

James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison, 1957); Kathka, "Bureau of Reclamation," 56.

²⁴William E. Warne, Clifford Fix, and G. W. Lineweaver to Straus, enclosing "Policy Basis for Landownership Aspects of Reclamation Program," Dec. 31, 1946; Straus to Gardner, July 10, 1946; Fix for files, Feb. 13, 1947; Krug to Straus, n.d., ca. Jan. 13, 1947; Gardner note, Jan. 13, 1947, file 742, RG 115; Krug to Cyrus E. Woodward, Jan. 27, 1947, file 742—Central Valley, *ibid.*; interview with economist Paul S. Taylor, Berkeley, Calif. Dec. 16, 1977.

around the excess land law. Most importantly, the bureau was trying to fight off threats to its empire in California by two agencies that promised relief from the 160-acre law. The Corps of Engineers still hoped to operate the Kings River dam. The state of California toyed with purchasing CVP from the federal government; under the California Water Project adopted in 1958, the state, rather than the federal government, developed new irrigation areas. The position of the corps and the state created pressure for the bureau to modify the acreage limitation.²⁵

Yet Straus could not abandon the excess land law openly, even if Krug was willing. Straus knew, as his predecessor had observed, that the 160-acre law was indispensable to reclamation appropriations, particularly among liberals, who were the most receptive to federal spending. Nonwesterners in Congress looked askance at reclamation until they learned it was "a settlement and homesteading program," said Bashore. "As long as reclamation projects fulfill that purpose, public endorsements and public funds can be secured for reclamation projects. . . ." To a large extent the bureau's political dilemma distilled into a question of constituency. A powerful, well organized constituency stood to benefit directly from abandonment of the excess land law, but there was no group at the time which stood to benefit directly from the law's enforcement. While such a group could perhaps have been created, as occurred for legislation supporting industrial unions in the 1930s, it remained a potential rather than an active force. Meanwhile, the preservation of the redistributive principle relied on a generalized group for which the 160-acre law was but one of many social welfare goals.²⁶

To escape from this political dilemma Straus devised a subtle strategy that called for rhetorical adherence to the acreage limitation but which, through a program limited to "technical compliance" with the law, eschewed actual enforcement. Testi-

²⁵Senate Committee on Public Lands, *Hearings on Exemption of Certain Projects*, 94; Paul S. Taylor, *California Social Scientist* (3 vols., oral history interview, Bancroft Library), II, 208.

²⁶Senate Committee on Irrigation and Reclamation, *Hearings on Central Valley Project, California*, 78 Cong., 2 sess., (1944), 192; see also the remarks of Senator Paul Douglas in the *Cong. Rec.*, 88 Cong., 1 sess. (1962), 5711.

fying in 1947, Straus defended the land limitation, but he restricted his remarks mainly to those laws aimed at curbing speculation and keeping the time-honored limit on the statute books. Straus exhibited little of the ideological fervor that had characterized the defense in 1944; the bureau's contribution to correcting the land pattern and to building community was conspicuously absent. The commissioner's rhetorical defense mollified supporters of the law. But at the same time he explained to opponents how to avoid its substance through technical compliance. Straus volunteered that if a corporation had ten stockholders, it would be entitled to water for 160 acres per partner. He also suggested that a landowner could deed out 320-acre parcels to his married relatives and children and remain in technical compliance. The commissioner raised laughter when he acknowledged that such devices would not constitute "spiritual compliance," but he hastened to say that technical compliance was good enough for him. A dismayed Downey termed Straus's recitation "blithe." Downey continued to insist that the law was harsh and unworkable. Straus cajoled: do not worry, we are flexible. Perhaps because the commissioner's virtuoso performance took the sting out of acreage limitation, the Downey bill died in committee.²⁷

Quietly and apparently without informing Krug, Straus had already begun to implement the technical compliance program. Thwarted in its attempt to change the law legislatively, the bureau altered the law administratively. Technical compliance entailed two problems—bringing older projects with long-standing violations into compliance and devising escape hatches for new projects. The agency struck first at projects already in operation, particularly those authorized before the 1926 act introduced recordable contracts. Although the 1946 landownership survey claimed that enforcement had reduced violations to a minimal 3.7 percent, Straus acknowledged privately that many "serious violations" had to be corrected. Regional directors stressed that compliance would be obtained only when excess landowners realized enforcement would

²⁷Senate Committee on Public Lands, *Hearings on Exemption of Certain Projects*, 104–108, 257.

proceed “at any cost,” including shutting off the water of recalcitrant owners. The commissioner’s office shrank from such tactics, however; it would not go beyond voluntary measures.²⁸

Voluntarism required new exceptions. Rather than force immediate breakup by withholding water, Straus decided to apply the recordable contract technique. The excess landowners, who had been receiving water they were not entitled to for as long as four decades, could now receive water for another decade before having to sell. Some regional directors complained that the grace period was excessive. “No progress towards securing compliance will be achieved until the end of that period,” said one; “efforts toward enforcement made so far would be largely nullified.” This tactic suffered from the further disability that it lacked specific statutory authority, said Chief Counsel Clifford Fix. He got the solicitor to approve the stratagem, nevertheless, because he found it analogous to the purpose of breaking up the larger holdings. Although Fix cautioned that “we should avoid expressing the idea that any degree of ‘compliance’ with the statute is thus effected,” the bureau happily transferred these older excess lands to the “not in violation” category as soon as they came under recordable contracts.²⁹

Another, more far-reaching administrative device—accelerated or lump-sum payment of construction charges—struck directly at the redistributive principle. Straus theorized that the acreage limitation would lapse as soon as construction charges were paid off. During the normal forty-year period for payout, owners of more than 160 acres would have to dispose of their excess lands to receive project water. But if the payout period

²⁸Straus to Regional Director, Boise, Idaho, Dec. 10, 1946; H. E. Robbins to Straus, Feb. 21, 1950; Fix to Straus, July 17, 1947, file 742, RG 115.

²⁹E. A. Moritz to Straus, Aug. 15, 1947; Fix to Straus, July 17, 1947, *ibid.* Landowners always hoped that during the ten-year grace period a change in policy or some new technicality would in the end stave off disposition. But even if they had to sell, the economic benefits from a decade of subsidized water were ample. Harry Horton, counsel for the Imperial Irrigation District, explained the willingness of some landowners to sign recordable contracts: “He thinks if he gets water for 10 years . . . without having to sell it, he can make enough out of it so he can afford to sell the land at any old price.” Senate Committee on Interior and Insular Affairs, Subcommittee on Irrigation and Reclamation, *Hearings on Acreage Limitation (Reclamation Law) Revision*, 85 Cong., 2 sess., (1958), 87–88.

were accelerated, or perhaps even coincided with the initial operation date of the project, no one would have to dispose of any excess lands to receive project water. This proposition reduced reclamation policy to the outlook of a banker interested only in the return on his capital investment, for it ignored the continuing heavy subsidies large landowners would receive during the project's operations. It was even less effective than the surcharge proposals, which would have recovered part of the operating subsidy.³⁰

Accelerated payout needed a veneer of legal respectability. The associate solicitor, Felix Cohen, provided it in October 1947 by simply putting his name to an opinion, M-35004, supplied two days earlier by D. M. Hudson of the office of the chief counsel of the bureau. The Hudson-Cohen opinion held that early payout of construction charges would free excess lands from the limit whether they were covered by water-right applications, which were filed by individuals, or whether they came under the joint liability contracts of such organizations as irrigation districts. The opinion turned on Section 3 of the 1912 act, which read as follows: "... no person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable land for which entry or water-right application shall have been made . . . before final payment in full of all installments of building and betterment charges shall have been made . . . per single ownership of private land for which a water-right may be purchased . . . nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said acts nor a water right sold or recognized for such excess. . . ." The opinion relied on King's instructions of 1914, which was interpreted as saying flatly that early payout removed the acreage limitation on lands held under water right applications.³¹

Having established this principle for the lands held by individuals, Hudson applied it to tracts covered by joint-liability contracts in irrigation districts. In the Reclamation Acts of 1922 and 1926 district contracts supplanted water-right

³⁰Straus to Mastin G. White, Sept. 19, 1947, file 742, RG 115.

³¹Hudson draft, Oct. 20, 1947; Cohen to Straus, Opinion M-35004, Oct. 22, 1947, *ibid.*

applications; he argued that with these instruments Congress desired merely a change of form, not of policy. Consistency demanded that the same early payout provisions he had just established for the individual contracts should apply to district contracts. "Otherwise, substantially different acreage restrictions might result" simply because joint-liability contracts had superseded water-right applications. He held therefore that, according to Section 3 of the 1912 act, lands receiving water under a joint-liability contract were relieved of the excess-land restrictions upon full payment of construction charges.³²

The opinion was riddled with problems. In December 1961 Solicitor Frank J. Barry overruled it with an exhaustive opinion that left the 1947 statement in tatters. In 1976 the Ninth Circuit expressed amazement at the Hudson-Cohen opinion's "obvious" errors and "surprising superficiality." The court attributed the legal flaws to the bureau's political maneuvering.³³

One of the principal problems with opinion M-35004 was that it relied on the instructions devised by King in 1914, and misconstrued them to boot. King's findings had been "reached largely on 'feel and hunch', with not much law to support it . . .," cautioned a regional counsel in 1947. The phrase "nor in any case in excess of one hundred and sixty acres" appeared

³²Opinion M-35004. Kathka interprets Straus's technical compliance program as an attempt to plug the loopholes in reclamation law instead of seeing it as a means to use them to the fullest and, indeed, to open new ones (pp. 102–108). Fix extended the Hudson-Cohen opinion even further in 1948. An entire water user district might not want to employ the accelerated payment option, but individual landowners might, although they would be blocked by the joint-liability contract. Fix fused disparate sections of the 1912 act ("even though the words of the 1912 Act themselves are not aptly descriptive" of the situation) with a section of the 1926 act (although "admittedly, the provision . . . does not apply specifically to the question we have here"). The effect of his action was to open the lump-sum payment possibility to individuals even though they were covered by joint-liability contracts. None of the regional counsellors he asked for advice had sensed these possibilities (Fix to Straus, Sept. 3, 1948, Administrative Letter 303, Supp. 1 - Attachment #1, Taylor Papers, Bancroft Library). The Dwight Eisenhower administration generally followed the lines of Straus's technical compliance program. In this case, however, it tightened the law when Solicitor of the Interior Elmer F. Bennett overturned Fix's interpretation (64 I.D. 273). On Eisenhower-era policy, particularly the Kings River controversy, see the Reclamation files in the Fred Seaton Papers, Dwight D. Eisenhower Library, Abilene, Kansas, especially the C. Petrus Peterson memorandum, "Kings River Contract," n.d. ca. June 1957, and Seaton to Philip A. Gordon, July 12, 1957.

³³68 I.D. 370; *United States v. Tulare Lake Canal Co.*, 535 F. 2d 1093, 1139, 1140 (1976).

to mandate the acreage limitation. But assuming the section was ambiguous, Hudson might have had recourse to legislative history; instead he relied on King, who had not read legislative history either. The misreading stemmed from the failure to realize that King was dealing with the normal, not an accelerated, payout period. Secretary of the Interior Walter Fisher said in 1914 that Section 3 would “prevent the consolidation of holdings” until full payment of the building charge had been made. “By that time it is believed that the land will be in the hands of permanent settlers and speculative holdings eliminated.” This was because, at the time of the enactment of the 1912 law, an individual could not—at least before the normal payout period—receive water for lands in excess of 160 acres. Furthermore, as Solicitor Barry pointed out, King had said only that the 1912 act could be construed “to permit” delivery of water to excess lands after payout, not that such deliveries “could be demanded as a matter of right.” Barry argued that even after the normal payout period, the Secretary of the Interior could permit the delivery of water to excess lands only if it fulfilled the purpose of establishing family farms.³⁴

More serious still, M-35004 ignored key provisions of the acts of 1914 and 1926. These laws added the “crucial” requirement that excess lands be sold or recordable contracts signed before their owners received project water. King’s instructions did not encompass the 1914 act, which was passed six weeks after he had filed his opinion. The 1914 and 1926 acts did not merely change the form of contract, as Hudson contended, but added provisions designed to make the excess land idea effective. The legislative history of both acts indicated support for the acreage limitation—part of a pattern of consistent congressional backing for the 160-acre law from the passage of the Newlands Act through the rejection of the Elliott amendment.³⁵

The administrative route was more circuitous than Downey’s legislative exemptions, yet exemption by bureaucracy raised

³⁴Howard R. Stinson to Fix, Dec. 5, 1947, file 742, RG 115; 68 I.D. 370, 382–383; Taylor, “The Excess Land Law: Execution of a Public Policy,” 487–488.

³⁵68 I.D. 370, 388–390, 395.

perhaps greater dangers. The legal interpretations could apply to any reclamation project, and their very subtlety made them more insidious. The operation recalled James Willard Hurst's observation about the momentous consequences that could flow from obscure legal processes. "By enlarging or restricting the scope of such concepts as 'property' or 'navigability,'" Hurst wrote, "lawmakers could favor one interest and subordinate another, in a fashion so quick and quiet, so economical of analysis, seeming so routinely logical in its application of accepted values, that . . . the ranking of interests" could proceed virtually unnoticed. Perhaps equally serious, the willingness of midcentury liberals such as Cohen, Chapman, and Straus to revise laws administratively to fit their policy goals betrayed a contempt for the law itself. In 1951 Chapman, frustrated with Congress's failure to pass legislation authorizing federal development of the oil-rich "tidelands," induced his solicitor to file a severely strained interpretation of the Surplus Property Act which gave him the authority to start a leasing program. The act applied to such mundane items as surplus typewriters, however, and Congress administered a humiliating rebuke to Chapman's legal maneuvering.³⁶

No matter how deficient its scholarship, the Hudson-Cohen opinion furnished the legal rationale for the technical compliance drive. Although one of the most important solicitor's opinions during the Truman period, the bureau omitted it from the department's annual compilation of decisions; it was available only in mimeograph. The opinion was not submitted for formal secretarial approval, but bureau and department officials accepted it as an authoritative policy statement. As Secretary, Chapman informally praised the technical compliance program, at least on older projects; he misleadingly cited the lump-sum payment device as being "in strict accord with the Reclamation laws as determined by the Associate Solicitor." These informal affirmations were soon reinforced by a string of contracts implementing the lump-sum payout provision. In

³⁶James Willard Hurst, *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1836–1915* (Cambridge, Mass., 1964), 208; Clayton R. Koppes, "Oscar L. Chapman: A Liberal at the Interior Department, 1933–1953" (Ph.D. dissertation, University of Kansas, 1974), 403–415.

December 1947 Straus issued Administrative Letter 303, in which he asked field officers to initiate action in accordance with the opinion. One of the first contracts was signed with the Klamath Drainage District in 1948, where accelerated payment lifted the limitations for fifteen ownerships with 13,489 excess acres, or a mean of 899 acres. Lump-sum contracts were negotiated with fifty-eight water-user districts from 1948 through 1952 and received the approval of the Secretary's office. In several cases, other aspects of the renegotiated contracts required submission to Congress, and the repayment provisions received congressional approval as part of the overall perfunctory review. Straus's strategy was bringing forth much paper compliance on older projects.³⁷

The wide-reaching implications of accelerated payout became clear when the bureau moved to apply it to new projects, notably the Central Valley. Secretary Chapman had assured uneasy congressmen in early 1951 that the lump-sum device was not being considered for any California project. Later that year he learned from an article in the *San Francisco News* that Straus was thinking of applying Administrative Letter 303 to the area served by the Pine Flat Dam. So long as the Corps of Engineers kept control of the dam, the large landowners in the Kings River service area hoped to receive irrigation water untroubled by the acreage limitation. Under the "Folsom Formula" enunciated by Truman in 1948, the Corps of Engineers was to transfer control of the dam to the bureau when it became operational. Reclamation law would apply, as New Dealers had made certain in the 1944 act. A stroke of Truman's

³⁷Chapman to John F. Shelley, March 29, 1951, Secretary's Reading File, Chapman Papers; Commissioner of Reclamation, Administrative Letter 303, Dec. 16, 1947; Boke to Straus, Feb. 23, 1950, file 742, RG 115; U.S. Dept. of the Interior, *Excess Land Provisions of the Federal Reclamation Laws and the Payment of Charges* (2 parts, Washington, D.C., 1956, copy, Dept. of the Interior Library), I, 51–53, appendix 45. In one of the supreme ironies of the 160-acre-law controversy, conservative congressmen decided to make Straus and Richard Boke serve as symbolic scapegoats of New Deal redistribution politics. The House attached a rider to an appropriations bill in the spring of 1948 which required that the commissioner of reclamation and the regional directors have ten years' practical engineering experience. Neither Straus nor Boke was an engineer. Spiced by unfounded accusations of disloyalty, the controversy over the Straus-Boke rider dragged on while both men continued to serve without pay. The rider finally lapsed on June 30, 1949, and Congress that fall voted them their back pay. See Koppes, "The Bureau of Reclamation's Excess Land Law," 54–58.

pen would have resolved the issue in favor of reclamation law, but he left the situation for the Eisenhower administration, which eventually effected the transfer. Anxious to add Pine Flat to his empire, Straus was willing to abandon the acreage limitation—one of the crucial policy distinctions between the corps and the bureau. He advised Chapman that a lump-sum payment of construction charges by the Kings River water users should be accepted as lifting the acreage limitation because such an arrangement would follow “entrenched” department policy enunciated in opinion M-35004. The Secretary avoided committing himself, saying merely that he wanted his staff to give the matter priority attention. Nothing happened, however, until October 1952, when defenders of the 160-acre law found their fears borne out. The bureau office in Fresno, California, assured the Kings River district that “the proposed lump-sum payment contract, which you requested and we furnished, would remove the excess land restrictions of Reclamation Law. . . .”³⁸

Supporters of the 160-acre law mobilized and, rightfully suspicious of the Reclamation Bureau’s and Interior Department’s intentions, carried their appeal to Truman. James G. Patton, president of the National Farmers Union, warned the chief executive: “Unless you act fast and decisively, your Administration is about to go down in history, ironically, as the one that pulled the plug on American family farm policy.” Truman appeared uninformed on the issue, however, and passed Patton’s letter to Chapman for an explanation of “what he is talking about.” The Missourian had issued generalized statements in support of the family farm; unlike his predecessor, however, he had not publicly endorsed the excess land law. In fact in 1952 Truman signed a bill raising the acreage limit to 480 acres on the San Luis Valley Project in Colorado, despite

³⁸ Alfred C. Wolf to Fred Aandahl, March 19, 1953, box 1, Program Staff Central Files, RG 48; Chapman to Shelley, March 29, 1951, Secretary’s Reading File, Chapman Papers; Straus to Chapman, Jan. 18 and May 15, 1952; Chapman to Straus, June 2, 1952, in U.S. Dept. of the Interior, *Excess Land Provisions*, I, appendices 36, 42, 43. On the “Folsom Formula,” see Official File 620, box 1515, Harry S. Truman Papers, esp. Frank Pace to Truman, “Past History of Action with Respect to Central Valley, California,” Aug. 5, 1949.

Chapman's objections. To Truman reclamation meant chiefly expansion of economic capacity.³⁹

The Secretary responded in December 1952 with a brace of memoranda that further clouded the situation and gravely disappointed supporters of the acreage limitation. The memoranda were written by the Program Staff, a small group of policy experts who functioned as Chapman's liberal conscience. In a memorandum to Truman, Chapman implied, as he had earlier, that the Hudson-Cohen opinion was correct. The Secretary acknowledged that the bureau had "accepted accelerated payout from some excess landowners" but only on older projects with long-standing violations. "At no time have I concurred in a general policy that lump-sum or accelerated payments would be an acceptable alternative to the application of the excess lands limitation," he said. The memo to Truman seemed to mean that, while Chapman would not apply the Hudson-Cohen opinion to new projects, it was a valid legal interpretation and was acceptable for older projects.⁴⁰

At the same time, however, Chapman sent a memorandum to Straus that seemed to contradict two vital points. First, "in accordance with the policy statements set forth" in the memorandum to the President, the Secretary said, "I am instructing you . . . to refuse to accept *any* lump-sum or accelerated payment of construction charges from *any* individual or organization which would, under Opinion M-35004 as construed by Administrative Letter 303," free the individuals or organizations from the acreage limitations. Chapman specifically told the commissioner not to negotiate such a contract on the Kings River. Second, the Secretary denied that the opinion carried secretarial approval and represented departmental policy. Since the opinion did not set forth any policy, Chapman said, it had not been submitted to or approved by the Secretary.⁴¹

The memoranda to the President and the commissioner contradicted each other on both policy and law. It was clear

³⁹Patton to Truman, Nov. 24, 1952, box 1, Program Staff Central Files, RG 48; Kathka, "Bureau of Reclamation," 99–101; Pelz, *Federal Reclamation Laws*, II, 1083.

⁴⁰Chapman to Truman, Dec. 24, 1952, box 1, Program Staff Central Files, RG 48.

⁴¹Chapman to Straus, Dec. 23, 1952, *ibid.* (emphasis added).

that Chapman would not apply accelerated payout as an overall policy. But on older projects the presidential memorandum said lump-sum payments were acceptable, while the memo to the commissioner said they were not. If the latter were correct, all the contracts recently signed and endorsed in the presidential memo, including thirty-six Minidoka project contracts approved by Under Secretary Vernon Northrop in the past two weeks, would be invalid. Furthermore, the Secretary's attempt to separate the legal and policy issues—two halves of the same walnut—blinked at reality. Opinion M-35004 had emerged from the bureau's technical compliance campaign, which was a matter of policy. In any event Chapman implicitly approved the Hudson-Cohen opinion and cited it explicitly as the basis for the accelerated-payout contracts he had approved. The department treated the opinion as authoritative until it was specifically limited by the solicitor in 1957 and overruled by the solicitor in 1961. Taken together the actions of December 12–24—the Minidoka contracts and Chapman's memoranda—had confused more than clarified the issue. It was as if the Secretary had faced a multiple-choice test with the options "all," "none," and "some of the above" and checked all three.⁴²

Incredulous, Straus conferred with Chapman on January 6, 1953. He recounted the meeting in a memorandum for the files, which was apparently the only record made of the session. According to Straus, Chapman said "he had not realized the effect of applying the order" and told the commissioner to disregard it. The commissioner considered that policy had thus reverted to the status quo ante. Straus overlooked, however, or perhaps was not informed of, Chapman's final statement on the question. On January 17 the Secretary wrote Senator Paul Douglas a letter in which he reiterated the substance of policy in the directive to Straus but left the Hudson-Cohen opinion untouched. Three days later Chapman retired from office, leaving policy as murky as the tule fogs that sometimes enveloped the Central Valley.⁴³

⁴²U.S. Dept. of the Interior, *Excess Land Provisions*, 51–53; 68 I.D. 370, 399, 402.

⁴³Straus memorandum for the record, Feb. 6, 1953, box 1, Program Staff Central Files, RG 48; Chapman to Douglas, Jan. 17, 1953, Case File Correspondence 26.3, Paul H. Douglas Papers, Chicago Historical Society, Chicago, Ill.

Nearly everyone connected with the issue was unhappy. Straus feared the “fuzzy” and “schizophrenic” situation blocked the application of accelerated payments on the Kings River. Under Secretary Northrop considered his superior’s instructions “obviously . . . ill advised in the form issued.” Fred A. Clarenbach of the Program Staff threw up his hands and wondered, “What is *present* Department policy?” But Chapman had particularly disappointed the liberals who supported the redistributive principle. “We certainly deserved better from the avowed friends of acreage limitation,” said Douglas sadly. In a final letter to Chapman, James Patton said: “Oscar, I don’t believe that your memorandum to the Commissioner of Reclamation answers the problem that I have posed. . . .” The farm leader pointed out that the Secretary had done nothing more than promise not to approve lump-sum payment contracts on new projects during his few remaining days in office. But the key elements—Administrative Letter 303 and the Hudson-Cohen legal opinion—remained intact to be implemented by later administrations.⁴⁴

The Truman administration’s legacy differed markedly from its predecessor’s. The Roosevelt administration had resurrected a nearly forgotten principle and fought to maintain it against severe odds. Liberals from 1946 to 1953, lured by economic growth and bureaucratic desire, buried the policy considerations in a blizzard of legal technicalities. At the crucial moment when federal policy could have triggered some redistribution of landholding in the Central Valley, Truman-era liberals elected instead to use federal subsidies to reinforce the most skewed land-tenure pattern in the nation.

The technical compliance strategy that Straus had pioneered continued to characterize the bureau’s approach to the 160-acre law into the 1970s. The accelerated payout mechanism was used by many water districts, particularly in California, in an attempt to buy their way out of the acreage limitation. They were finally rebuffed by the federal courts, the branch of government which has been the staunchest defender of the

⁴⁴Vernon Northrop to Bradley, Feb. 18, 1953; Fred Clarenbach memo for the files, Feb. 3, 1953, box 1, Program Staff Central Files, RG 48; Paul Douglas to Taylor, Jan. 23, 1953, Case File Correspondence 26.3, Douglas Papers; Patton to Chapman, Jan. 12, 1953, file 8–1, RG 48.

excess land law. In addition, a "lawyer's paradise" of legal technicalities, ranging from deeding excess lands to family members to apportioning 160 acres per person in investment trusts, has produced a paradox: The bureau had attained almost perfect paper compliance on its projects in California, but a subsidy to the largest interests was perpetuated. Of the 1,287,000 excess acres on reclamation projects in 1970, some 1,097,000 acres were found in the bureau's Mid-Pacific region, which included the Central Valley.⁴⁵

The 1976 ruling by the Ninth Circuit triggered the most intensive review of the acreage limitation principle since the Truman period. What the outcome will be remains unclear. Secretary of the Interior Cecil D. Andrus proposed in 1978 that the limit be raised to 320 acres per individual landowner or 640 acres for husband and wife, with the possibility of leasing an additional 160 acres apiece, for a maximum of 960 acres. If this proposal were adopted, the heavy subsidies to the largest farmers and corporations would stop, but medium-sized farmers would continue to benefit. The Andrus compromise seems destined to satisfy neither the large landowners, who would prefer to see the present situation perpetuated, nor agrarian reform groups such as National Land for People, which call for strict enforcement of the 160-acre standard. Nevertheless, if 160 acres as a figure seems doomed, the acreage limitation as a symbol retains power and relevance. For in putting public water on private land the federal reclamation program has always raised one of the key challenges of public policy: Which groups should benefit from subsidies contributed by the entire public? The current controversy, like that in the period 1933 to 1953, may offer some insights into whether the federal government will use subsidies to reinforce or to alter the distribution of power in society.⁴⁶

⁴⁵House Committee on Interior and Insular Affairs, Subcommittee on Water and Power Resources, *Hearings on Acreage Limitation Provisions of Reclamation Law*, 94 Cong., 2 sess., (1976), 20, 125; Charles R. Renda, "Owner Eligibility Restrictions—Acreage and Residency," *Natural Resources Lawyer*, VIII (1976), 265; Hogan, *Acreage Limitation in the Federal Reclamation Program*, 127–177.

⁴⁶*New York Times*, April 14, 1978.